

Article - Environment

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§7–506.

(a) (1) To participate in the Program, an applicant shall:

(i) Submit an application, on a form provided by the Department, that includes:

1. Information demonstrating to the satisfaction of the Department that the contamination did not result from the applicant knowingly or willfully violating any law or regulation concerning controlled hazardous substances;

2. Information demonstrating the person's status as a responsible person or an inculpable person;

3. Information demonstrating that the property is an eligible property as defined in § 7–501 of this subtitle;

4. A detailed report with all available relevant information on environmental conditions including contamination at the eligible property known to the applicant at the time of the application;

5. An environmental site assessment that includes:

A. Established Phase I site assessment standards and follows principles established by the American Society for Testing and Materials and that demonstrates to the satisfaction of the Department that the assessment has been conducted in accordance with those standards and principles; and

B. A Phase II site assessment unless the Department concludes, after review of the Phase I site assessment, that there is sufficient information to determine that there are no recognized environmental conditions, as defined by the American Society for Testing and Materials; and

6. A description, in summary form, of a proposed voluntary cleanup project that includes the proposed cleanup criteria under § 7–508 of this subtitle and the proposed future use of the property, if appropriate; and

(ii) Subject to paragraph (2) of this subsection, pay to the Department:

1. An initial application fee of \$6,000 which the Department may reduce on a demonstration of financial hardship in accordance with subsection (b) of this section;

2. An application fee of \$2,000 for each application submitted subsequent to the initial application for the same property; and

3. An application fee of \$2,000 for each application submitted subsequent to the initial application for contiguous or adjacent properties that are part of the same planned unit development or a similar development plan.

(2) If an applicant certifies that the applicant intends to use the eligible property to generate clean or renewable energy, the Department shall waive the fees required under paragraph (1)(ii) of this subsection.

(b) The Department shall adopt regulations to establish criteria for determining whether an applicant has:

(1) Demonstrated financial hardship; or

(2) Certified that the applicant intends to use the eligible property to generate clean or renewable energy.

(c) (1) The applicant may delay submitting the Phase II site assessment until after the application and applicable fees are submitted.

(2) If an applicant delays filing a Phase II site assessment, all related deadlines for public notice and action by the Department shall be extended and conform with the date the Phase II site assessment is submitted and the application is complete.

(d) (1) On submission of the application, the Department shall publish a notice of the application on its website and the applicant shall post notice at the property that is the subject of the application.

(2) The notices required under paragraph (1) of this subsection shall include:

(i) The name and address of the applicant and the property;

(ii) The name, address, and telephone number of the office within the Department from which information about the application may be obtained; and

(iii) The time period during which the Department will receive and consider written comments from the public.

(e) (1) (i) The Department shall notify the applicant in writing, within 45 days after receipt of the application, whether:

1. The application, including the applicant's status as a responsible person or an inculpable person, is approved;

2. The application is denied or incomplete; or

3. The Department has no further requirements related to the investigation of controlled hazardous substances at the eligible property as provided in paragraph (3) of this subsection.

(ii) If the Department denies the application or determines that the application is incomplete, the Department shall provide to the applicant the reasons for its decision in writing.

(2) (i) An applicant may resubmit an application within 60 days after receipt of notice of the Department's decision to deny the initial application or determination that the application is incomplete.

(ii) The Department shall approve or deny a resubmitted or revised application within 30 days after receipt.

(3) If the Department notifies the applicant that the Department has no further requirements at the eligible property in accordance with paragraph (1)(i)3 of this subsection, the Department shall include a statement that this notice does not:

(i) Subject to the provisions of § 7-505 of this subtitle, prevent the Department from taking action against any person to prevent or abate an imminent and substantial endangerment to the public health or the environment at the eligible property;

(ii) Remain in effect if the notice of no further requirements is obtained through fraud or a material misrepresentation;

(iii) Affect the authority of the Department to take any action against a responsible person concerning previously undiscovered contamination at an eligible property after a no further requirements notice has been issued by the Department; or

(iv) Affect the authority of the Department to require additional cleanup for future activities at the site that result in contamination by hazardous substances.

(4) The no further requirements notice shall provide the same liability protections as provided in § 7-513(b)(3) and (4) of this subtitle.

(5) The participant and any successors in interest in a property subject to a no further requirements notice shall continue to be protected from liability in the event of any violation of the conditions placed on the use of the property, provided that the participant and any successors in interest did not cause or contribute to the violation.

(f) (1) The Department shall deny an application if:

(i) The applicant is not an eligible applicant;

(ii) The property is not an eligible property; or

(iii) The property was initially contaminated by a release of hazardous substances after October 1, 1997 unless:

1. The property is acquired by an inculpable person; or

2. The contamination was caused by an act of God.

(2) For the purposes of paragraph (1)(iii) of this subsection, any property identified in the Superfund Enterprise Management System or the Comprehensive Environmental Response, Compensation, and Liability Information System in accordance with the federal act as of October 1, 1997 is presumed to have been initially contaminated on or before October 1, 1997.

(g) (1) Within 30 days after receiving notification of approval of an application, a participant shall inform the Department in writing whether the participant intends to proceed or withdraw from the Program.

(2) If a participant does not notify the Department of the participant's intent to proceed or withdraw in accordance with paragraph (1) of this subsection, the application will be deemed to be withdrawn.

(h) A determination by the Department that it has no further requirements may be transferred to a subsequent purchaser of the property provided that the subsequent purchaser did not cause or contribute to the contamination.

(i) (1) If a determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall record the determination in the land records of the local jurisdiction within 30 days after receiving the determination.

(2) If the determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions and the participant fails to record the determination in the land records in accordance with paragraph (1) of this subsection, the determination shall be void.

(3) (i) If a determination by the Department that it has no further requirements at a property is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall send a copy of the determination to a one-call system as defined in § 12-101 of the Public Utilities Article.

(ii) Any obligation for the participant to send the information required under subparagraph (i) of this paragraph does not negate the obligation of an owner as defined in § 12-101(f) of the Public Utilities Article to become a member of the one-call system under Title 12 of the Public Utilities Article.

(j) Subject to the provisions of § 7-516(a) of this subtitle and approval by the Department, if an owner of an eligible property that has limited permissible uses wants to change the use of the eligible property, the owner:

(1) Is responsible for the cost of cleaning up the property to the appropriate standard; and

(2) Shall be liable for any fees waived under subsection (a)(2) of this section if the eligible property is not in compliance with a certification that requires the eligible property to be used to generate clean or renewable energy.

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